

Affiant; Case 1:21-cr-10045-ADB is not suitable for judicial resolution, the "cause of action" is unconstitutional, and creates a "right of action" under Title 18 USC Section 1621, and Title 18 USC Section 242, and 42 USC Section 1983. Because the Second Amendment is being infringed by the non-discretionary administrative functions, of prosecutions use, of Title 18 Crimes and Criminal Procedures Act of 1948. The court employees have oath and affirmation to the Constitution only, and are supposed to regard it with the highest pronty.

-Executive Order No. 13132, 64 Fed. Reg. 43255 (9)
"acts of the national government whether Legislative, Executive, or Judicial in nature, that exceed the enumerated powers of that government under the Constitution, violate the principle of Federalism"

-Article 1 Section 8 Clause 17 (U.S. Constitution)
"Congress shall have the power to exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square)"

-D.C. Code Section 1-203.02 (District of Columbia Home Rule)
"the legislation power of the District shall extend to all rightfull subjects of legislation within the District, consistant with the Constitution of the United States"

* "the Federal Constitution being supreme law, the Courts must refuse to give effect to a statute which Conflicts with the Constitution"
[Carter v. Carter Coal Co., 298 U.S. 238-341, 80 L. Ed. 1160]

[Courts, Section 95 - duty to declare unconstitutionality of statute]
[Classified to U.S. Supreme Court Digest, Lawyers Edition]

* "if statute plainly violates Constitution, it is the duty of the Court to so declare"
[United States v. Butler, 297 U.S. 1-88, 80 L. Ed. 477]

[Statutes, Section 12 - conformity to Constitution as essential]
[Classified to U.S. Supreme Court Digest, Lawyers Edition]

* "legislative powers granted by Article 1 of Federal Constitution, are limited, not only by framers affirmative delegation, but also principle that powers may not be exercised in way that violates other specific provisions of Constitution"
[Saenz v. Roe, 526 U.S. 498, 119 S. Ct. 1518, 143 L. Ed. 2d 689]

Affiant; the accused in case 1:21-cr-10045-ADB, was forced into detainment without a crime, and condemned for being within rights, privileges and Immunities secured by Constitutional law provisions.

against the accused deviate and defy guide lines set forth by the U.S. Constitution, Title 28 USC Section 453. While the claims

* "having jurisdiction of case constitutes basic element of Constitutional requirement of due process"
[Powell v. Alabama, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158]

* "the court of appeals correctly recognized that the necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took challenged action, he had jurisdiction of subject matter"
[Stump v. Sparkman, 435 U.S. 478, 506, 98 S. Ct. 2894, 2910, 57 L. Ed. 2d 895]



Case 1:21-cr-10045-ADB Document 90 Filed 07/18/22 Page 2 of 6

* Judge is immune from suit for money damages for deprivation of civil rights only when he has jurisdiction over both parties and subject matter, and defendant judges motion for dismissal of action would be denied where it alleged that he directly or conspiratorially deprived plaintiff of his civil rights under 42 USC Section 1983, 1985(3), and 28 USC Section 1343(a)(1) and (3)"

[Smithson v. Ray, 427 F. Supp. 11 (E.D. Tenn. 1976)]

* "Congress, under its Constitutional authority over the District of Columbia, Constitution Article 1 Section 8, has conferred on District of Columbia courts, administrative functions, which outside District, it could not confer on courts solely under Article 3" [Pitts v. Peak, 50 F. 2d 485, 1931 U.S. App. LEXUS 4491 cert. denied, 284 U.S. 640, 52 S. Ct. 21, 76 L. Ed. 544, 1931 U.S. LEXUS 671 (U.S. 1931)]

* "Article 3 Section 2 Clause 1 of the Constitution embraces alike, civil and criminal cases" [Tennessee v. Davis, 100 U.S. 257, 25 L. Ed. 648]

* "Article 3 grants Federal courts the power to redress harm that defendants cause plaintiff, not free-wheeling power to hold defendant accountable for legal infractions"

"only defendant plaintiff concretely harmed by defendants statutory violations have Article 3 standing to seek damages in Federal court. An injury-in-law is not an injury-in-fact. The asserted harm must have close relationship to harm traditionally recognized as providing basis for lawsuit"

[Transunion LLC v. Ramirez, 141 S. Ct. 2190, 210 L. Ed. 2d 568]

* "the exercise of judicial power under Article 3 is restricted to litigants who can show injury-in-fact, resulting from the action they seek to have the court adjudicate"

"Article 3 of the Constitution confines Federal Courts to adjudicate actual cases and controversies. To ensure the presence of a case or controversy, this court has held that Article 3 requires as an irreducible minimum, that the plaintiff allege (1) an injury, that is (2) fairly traceable to the defendants allegedly harmful conduct, and that is (3) likely to be redressed by requested relief"

"Article 3 limits Federal judicial power to disputes which confine courts to a role, consistent with a system of separation of powers"

[Allen v. Wright, 468 U.S. 737, 751, 104 S. Ct. 3315, 3324, 82 L. Ed. 2d 556]

* "the law of Article 3 standing is built on a single basic idea of separation of powers" [Raines v. Byrd, 521 U.S. 811, 820, 117 S. Ct. 2312, 138 L. Ed. 2d 849]

- Title 15 USC Section 7901(b) Purpose.

(6) To preserve and protect the separation of powers doctrine, and important principles of Federalism, State sovereignty

* "the court of appeals also held that the judge has forfeited immunity because of failure to comply with elementary principles of due process"

[Stump v. Sparkman, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331]

Case 1:21-cr-10045-ADB is unconstitutional of its "cause of action", Title 18 Crimes and Criminal Procedures Act of 1948, it violates and infringes Second Amendment rights guarantee, because of it, adverse to Article 1 Section 8 Clause 17 and Article 3 standing requirement.

* "the touchstone to justiciability of a controversy is injury to a legally protected right" [Joint Anti-Fascist Refugee Com. v. McGrath, 341 U.S. 123]

- Executive Order No. 13132, 64 Fed. Reg. 43255(d)

"The people of the States are free, subject only to the restrictions in the Constitution itself, or in Constitutionally authorized Acts of Congress, to define the Moral, Political, and Legal character of their lives"

- The 15 USC Section 7901 (Protection of Lawful Commerce in Arms Act)

(a) Findings.

(2) The Second Amendment to the U.S. Constitution protects the rights of individuals, including those who are not members of a militia, or engaged in military service or training to keep and bear arms

* "at the time of the founding, as now "bear" meant to "carry". When used with arms however the term has a meaning that refers to carrying for the particular purpose of confrontation. In *Muscarello v. United States*, Justice Ginsberg wrote that surely the most familiar meaning is, as the Constitution's Second Amendment indicates, wear, bear, or carry upon the person, or in the clothing, or in the pocket, for the purpose of being armed and ready for defensive action, in case of conflict with another person" [District of Columbia v. Heller, 554 U.S. 570, 128 S.Ct. 2783, 171 L. Ed. 2d 637, 2008 U.S. LEXUS 5268] (2008)

* "to confine the right to be armed to home, was to divorce Second Amendment right to self defense described by U.S. Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010) [Moore v. Madigan, 702 F.3d 933 (7th Circuit 2012) reh'g en banc, denied, 708 F.3d 901 (7th Circuit 2013)]

* "the Second Amendment encompassed a right to carry firearms openly in public for self defense, because "bear" implied such a right" [Young v. State of Hawaii, 896 F.3d 1044, 2018 U.S. App. LEXUS 20525]

* "applicant for license to carry concealed weapon were unconstitutionally denied their right to bear arms by county requirements that applicants demonstrate good cause by documenting specific threat against them, since responsible law abiding citizen had right to carry firearm in public for self defense" [Peruta v. County of San Diego, 742 F.3d 1144 (9th Circuit 2014) reh'g en banc granted 781 F.3d 1106 (9th Circuit 2015)]

Case 1:21-cr-10045-ADB Document 90 Filed 07/18/22 Page 4 of 6

Right of Action" to apply 18 USC Section 7622 (Page 4 of 6) 18 USC Section 242 (Deprivation of Rights under Color of Law) and 42 USC Section 1983 (Civil Action for deprivation of Rights).

Is applied under 28 USC Section 576, and 28 USC Section 1442 with Civil Division of Department of Justice in Washington, where the U.S. Constitution is kept, along with 42 USC Section 1988

* "if courts are to regard Constitution, and if Constitution is superior to any ordinary Act of legislature, Constitution, and not such ordinary Act must govern case to which both apply" [Marbury v. Madison, 5 U.S. 237, 2 L. Ed. 60 limited]

— perjury could only be upon oath authorized by law of the United States" [United States v. Manion, 44 F. 800 (D. Wash. 1890)]

— oath to be basis for prosecution of perjury, could have been one called for by regulation of department of government as well as specifically by statute" [United States v. Morehead, 243 U.S. 607, 37 S. Ct. 458, 61 L. Ed. 976]

Affiant; With all, due respect, I must assert myself when within my rights, when arrested for being within the boundaries of rights guaranteed by Americas Constitution, and I wish that I was not burden by the ideas of others using power to inflict what they think.

* "Fourth Amendment, in respect to search and seizure, is declaration of established principle of common law, and was designated to prevent Federal Legislative or Executive encroachment on established rights" [Agnello v. United States, 290 F. 671 (2nd circuit 1923), modified, 269 U.S. 20, 46 S. Ct. 4, 70 L. Ed. 145]

— Executive Order No. 13132, 64 Fed. Reg. 43255(d) "The people of the States are free, subject only to restrictions in the Constitution itself, or Constitutionally authorized Acts of Congress, to define the Moral, Political, and Legal character of their lives"

— Title 15 USC Section 7901(a) Findings.

(2) The Second Amendment to the U.S. Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training to keep and bear arms.

* "to confine the right to be armed to home, was to divorce Second Amendment right to self defense described by U.S. Supreme Court in District of Columbia v. Heller, 554 U.S. 570 (2008), and McDonald v. City of Chicago, 130 S. Ct. 3020 (2010)" [Moore v. Madigan, 702 F.3d 933 (7th circuit 2012) reh'g en banc, denied, 708 F.3d 1044, 2018 U.S. App. LEXIS 20525]

79

VERIFIED & SEALED BY
OFFICER E. SCHRIEDER
7/7/22

Name: Pepo H. El
Federal Medical Center
P.O. Box 1600
Butner, NC 27509

Number: 19289509

RALEIGH NC 275
Research Triangle Region
13 JUL 2022 PM 6 L



Court Clerk C/o Judge Allison D. Burroughs
John Joseph Moakley U.S. Courthouse
One Courthouse Way,
Boston, MA. 02210-3002

U.S. MAIL
DEFENSE

02210-300475

